



Berkshire Hathaway
Specialty Insurance



Medical Practitioner Professional Indemnity Insurance

PRODUCT DISCLOSURE STATEMENT

Exclusively Distributed by Tego Insurance Pty Ltd



Table of Contents

Important Information

ABOUT THIS PDS.....	2
UPDATING THIS PDS	2
ABOUT YOUR POLICY.....	2
APPLYING FOR YOUR POLICY	2
THE COST OF YOUR POLICY	2
ABOUT US.....	2
THIS IS A CLAIMS-MADE POLICY.....	3
RUN-OFF COVER INDEMNITY SCHEME.....	3
MEDICAL PRACTITIONERS IN NEW SOUTH WALES.....	3
ELECTRONIC DELIVERY OF POLICY DOCUMENTS.....	3
YOUR COOLING OFF RIGHTS.....	3
YOUR DUTY OF DISCLOSURE	3
PRIVACY	4
COMPLAINTS	4
GENERAL INSURANCE CODE OF PRACTICE.....	5
FINANCIAL CLAIMS SCHEME	5
CONTACT INFORMATION.....	5

Policy Wording

SECTION I – INSURING AGREEMENTS	6
SECTION II – LEGAL FEES COSTS AND EXPENSES	8
SECTION III – DEFENCE	11
SECTION IV – EXCLUSIONS.....	11
SECTION V – LIMITS OF LIABILITY	14
SECTION VI – POLICY TERRITORY	15
SECTION VII – CLAIMS CONDITIONS.....	16
SECTION VIII – CONDITIONS.....	16
SECTION IX – DEFINITIONS	19

Important Information

Please read this Product Disclosure Statement (PDS) carefully to ensure you understand what insurance cover is provided. If you have any questions or if you would like more information, please contact your broker.

ABOUT THIS PDS

This PDS contains two parts: (1) Important Information; and (2) the Policy Wording. Other documents may comprise the PDS and we will tell you if this is the case in the relevant document.

Any advice that we provide, in this PDS or otherwise, is general in nature only and has not considered your objectives, financial situation or needs. You should carefully consider the information provided having regard to your personal circumstances to decide if it is right for you.

UPDATING THIS PDS

We may update the information contained in this PDS when necessary. A copy of any updated information will be made available to you by your broker at no cost to you. We will issue you with a new PDS or a Supplementary PDS, where the update is to rectify a misleading or deceptive statement or omission, which is materially adverse from the point of view of a reasonable person deciding whether to obtain or renew this insurance.

This PDS was prepared on 20 April 2016.

ABOUT YOUR POLICY

If we issue you a Policy, you will be given a Schedule. The Schedule sets out the covers you have chosen and should be read together with the Policy Wording. You should check the Schedule carefully to ensure it accurately reflects the cover you have purchased.

The Policy Wording and Schedule form your legal contract with us. Please keep them in a safe place for future reference.

APPLYING FOR YOUR POLICY

Please complete the proposal form and provide any additional information requested by your broker. Your broker will then submit your application for our consideration.

THE COST OF YOUR POLICY

The premium payable for your Policy is determined by our assessment of the risk to be insured as well as the taxes and government charges that are applicable.

When calculating your premium, we take a number of factors into account including your practice mix, your gross billings, the covers you select and your claims history.

ABOUT US

We are Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence No. 466713). We are authorised by the Australian Prudential Regulation Authority to carry on general insurance business in Australia. You can reach us by email at australia@bhspecialty.com or you can write to us at GPO Box 650, Sydney NSW 2001.

We have authorised Tego Insurance Pty Ltd (ABN 34 608 505 960, AFS Licence No. 482467) ('Tego') to underwrite and issue policies of insurance on our behalf pursuant to an agency agreement. Tego is our agent and does not act for you.

THIS IS A CLAIMS-MADE POLICY

Coverage under this Policy is limited to claims first made against you and reported to us in writing during the Policy Period.

RUN-OFF COVER INDEMNITY SCHEME

The Run-Off Cover Indemnity Scheme (ROCS) is a Commonwealth Government scheme that provides run-off cover free of charge to eligible medical practitioners.

Run-off cover is insurance that is maintained to cover claims made against a person after they cease practice. You may become eligible for ROCS when you:

- are 65 years of age or over and have retired permanently from private medical practice; or
- are permanently disabled; or
- have not engaged in private medical practice for the preceding three years (including if you are no longer in paid employment, are practising medicine solely in the public sector or are no longer practising medicine); or
- are on maternity leave; or
- leave Australia after working as a medical practitioner under visa sub-classes 422 (medical practitioner) or 457 (business (long stay)); or
- die (in which case your estate may be eligible for ROCS).

You must notify us when you become eligible for ROCS. If you cease to be eligible for ROCS (for example if you resume private medical practice) you will not be covered under ROCS for claims made against you or circumstances notified after you return to practice.

MEDICAL PRACTITIONERS IN NEW SOUTH WALES

For practitioners in New South Wales, we are required to comply with the requirements of the Insurance Regulation Order made under the *Health Care Liability Act 2001 (NSW)*.

You can download a copy of the Order from: http://www.gazette.legislation.nsw.gov.au/so/download.w3p?id=Gaz_Gazette%20Split%202006_2006-66.pdf.

ELECTRONIC DELIVERY OF POLICY DOCUMENTS

We will send your Policy documents by email. If however you wish to receive your Policy documents in hard copy, please tell your broker.

YOUR COOLING OFF RIGHTS

If you want to cancel your Policy after you buy it, you may do so and receive a full refund of your premium. To do this, please notify your broker in writing within twenty one (21) days from the date your Policy commenced.

This cooling off right does not apply if you have made or are entitled to make a claim.

Even after the cooling off period ends, you still have cancellation rights however we and your broker may deduct certain amounts from any refund that may be due for administration costs or any non-refundable government charges and taxes.

YOUR DUTY OF DISCLOSURE

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If You Do Not Tell Us Something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

PRIVACY

We, along with all companies in the Berkshire Hathaway group of insurance companies, are committed to safeguarding your privacy and the confidentiality of your personal information. We, and entities acting on our behalf, only collect personal information from or about you for the purpose of assessing your application for insurance and administering your insurance policy, including managing and administering any claim made by you. Without your personal information, we may not be able to issue insurance cover, administer your insurance or process your claim.

We will only use your personal information in accordance with the *Privacy Act 1988* (Cth) and for the purposes outlined above.

We may disclose your personal information to other companies in the Berkshire Hathaway group and other third party service providers for the purposes outlined above or where disclosure is permitted by law. These entities may be located in Australia or overseas, including in India, Singapore, Hong Kong, New Zealand, the United Kingdom and the United States of America. Where such disclosure is made, we make all reasonable efforts to ensure that the arrangements we have in place with overseas parties impose appropriate privacy and confidentiality obligations on those parties to ensure that imparted personal information is kept secure and that such information is only used for the purposes noted above.

If you wish to obtain details of the personal information we hold about you (including contacting us to correct or update the personal information we hold about you), or if you have a complaint about a breach of your privacy, please refer to our privacy policy available at <http://www.bhspecialty.com/privacy-Policy.html>, or contact us by email to australasia.privacy.compliance@bhspecialty.com.

We reserve the right to refuse access under the grounds permitted by the *Privacy Act 1988* (Cth) and if you are seeking information on another person's behalf, we will require written authorisation from that individual.

COMPLAINTS

We will do everything possible to provide a quality service to you. However, we recognise that occasionally there may be some aspect of our service or a decision we have made that you wish to query or draw our attention to. We have a complaints and dispute resolution procedure which undertakes to deal with your complaint promptly. It is important to follow the complaint handling process so we are able to resolve your concern effectively.

Contact Us

If you would like to make a complaint, please contact us. In most cases we will be able to resolve the matter. If we cannot, you will be referred to a manager who will attempt to resolve the matter. A response will be provided within fifteen (15) business days.

Independent Internal Review

If you are dissatisfied with how your complaint has been resolved, you can escalate your complaint to our Internal Dispute Resolution (IDR) department who will review the decision independently. You may be asked to put your complaint in writing to us.

You can contact our IDR department by:

Email: Complaints.Australia@bhspecialty.com

Post: Berkshire Hathaway Specialty Insurance
GPO Box 650, Sydney NSW 2001

The IDR department will contact you with a decision within fifteen (15) business days of receiving your complaint.

Review By The Financial Ombudsman Service

In most cases we can resolve any problems our customers have but if you remain dissatisfied with how we have resolved your concern you can contact the Financial Ombudsman Service (FOS) for an independent external review at no cost to you. We are bound by any determination by FOS but the decision is not binding on you.

FOS can be contacted by:

Phone: 1300 780 808

Fax: (03) 9621 2060

Email: info@fos.org.au

Post: Financial Ombudsman Service
GPO Box 3, Melbourne VIC 3001

Web: www.fos.org.au

GENERAL INSURANCE CODE OF PRACTICE

We are a signatory to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

You can download a copy of the Code from:
<http://codeofpractice.com.au>.

FINANCIAL CLAIMS SCHEME

This Policy may be a protected policy under the Financial Claims Scheme (FCS) which protects certain insureds and claimants in the event of an insurer becoming insolvent. In the unlikely event of us becoming insolvent you may be entitled to access the FCS, provided you meet the eligibility criteria.

More information about the FCS may be obtained from the APRA website at <http://www.apra.gov.au> and the APRA hotline on 1300 55 88 49.

CONTACT INFORMATION

Notice of Claims are to be given to:

Email: Healthcareclaimsaustralia@bhspecialty.com

Mail: Berkshire Hathaway Specialty Insurance
GPO Box 650, Sydney NSW 2001

Phone: 1300 938 991 (24 hours)

Other matters:

Tego Insurance Pty Limited

Address: Level 5, 260 Elizabeth Street
Surry Hills NSW 2010

Phone: + 61 2 8006 8346 | M: 0402 103 633



Policy Wording

Words and phrases that appear in bold type have special meanings in this Policy.

Please refer to the SECTION IX - DEFINITIONS of the Policy.

SECTION I - INSURING AGREEMENTS

A. Cover

We will pay on **Your** behalf all sums which **You** become legally obligated to pay as **Damages** in respect of a **Medical Incident**, arising out of **Your** provision of **Healthcare Services**, to which this Policy applies, provided such **Medical Incident** occurs on or after the **Retroactive Date** and for which a **Claim** is first made against **You** and reported to **Us** during the **Policy Period**.

A1. Misleading or Deceptive Conduct

We will pay on **Your** behalf all **Damages** resulting from any **Claim**, arising out of **Your** provision of **Healthcare Services**, for misleading and deceptive conduct at law or under the *Competition and Consumer Act 2010 (Cth)*, *Corporations Act 2001 (Cth)*, *Australian Securities and Investments Commission Act 2001 (Cth)* or similar provisions in the State's Fair Trading Acts.

A2. Defamation

We will pay on **Your** behalf all **Damages** resulting from any **Claim** for defamation committed or allegedly committed by **You** arising out of **Your** provision of **Healthcare Services**.

A3. Intellectual Property

We will pay on **Your** behalf all **Damages** resulting from any **Claim** for any infringement of any intellectual property rights, other than patents and **Trade Secrets** arising out of **Your** provision of **Healthcare Services**.

A4. Telehealth

We will pay on **Your** behalf all **Damages** resulting from any **Claim** for any civil liability in respect of **Telehealth Services** arising out of **Your** provision of **Healthcare Services**.

A5. Breach of Contract

We will pay on **Your** behalf all **Damages** resulting from any **Claim** alleging a breach of contractual obligation arising out of **Your** provision of **Healthcare Services**.

Provided always that **We** will not be liable for any liability assumed by **You** under any agreement unless such liability would have attached to **You** in the absence of the agreement.

A6. Medicare Benefits

Notwithstanding Exclusion 7 Dishonesty, **We** will pay on **Your** behalf all sums which **You** become legally obligated to pay as **Damages** resulting from any allegation of inappropriate act or omission, arising from a **Medicare Benefits Complaint** against **You** occurring or committed in connection with the provision of **Healthcare Services**.



Nothing in this cover will require **Us** to indemnify any employee who has perpetrated any dishonest, fraudulent, criminal or malicious act or omission or any act or omission if **You** actioned or condoned such dishonest, fraudulent, criminal or malicious act or omission.

A7. Vicarious Liability

We will pay on **Your** behalf all **Damages** resulting from **Claims** against **You** and employees and/or contractors providing **Healthcare Services** on **Your** behalf and when under **Your** direct supervision. Cover will not extend to the employees and/or contractors who committed or were involved in the **Medical Incident**.

A8. Breach of Confidentiality

We will pay on **Your** behalf all **Damages** resulting from any **Claim** for unintentional breach of any duty of confidentiality owed to a patient arising at law or any unintentional breach of the *Privacy Act 1988* (Cth), *Health Records and Information Privacy Act 2002* (NSW), *Health Records Act 2001* (Vic) or *Health Records (Privacy and Access) Act 1997* (ACT) or similar privacy legislation in Australia arising out of **Your** provision of **Healthcare Services**.

A9. Defence Costs

We will pay on **Your** behalf **Defence Costs** incurred in the defence and/or settlement of any covered **Claim**.

B. HIV, Hepatitis B or Hepatitis C

We will pay **You**, the individual medical practitioner named in the Schedule only, the sum specified in the Schedule for HIV, Hepatitis B or Hepatitis C cover if, as a result of **Your** first being diagnosed with HIV, Hepatitis B or Hepatitis C during the **Policy Period**, **You**:

1. Retire due to disability; or
2. Materially revise **Your** practice to enable **You** to continue to practice medicine; or
3. Go through significant training or retraining to enable **You** to continue to practice medicine.

You must advise **Us** of **Your** diagnosis in writing during the **Policy Period**.

The maximum amount payable under this Insuring Agreement is the applicable Sub-Limit of Liability stated in the Schedule.

Despite SECTION V - LIMITS OF LIABILITY Automatic Reinstatement of **Your** Limit of Liability, **Your** HIV, Hepatitis B or Hepatitis C Cover will discontinue and will not be reinstated during the **Policy Period** once the Scheduled sum has been paid.

C. Reputation Protection Costs

We will reimburse **You** for **Reputation Protection Costs** in respect of an **Adverse Public Relations Event**. The **Adverse Public Relations Event** must:

1. First commence during the **Policy Period** and after the **Retroactive Date**;
2. Take place within the Policy Territory as described in SECTION VI - POLICY TERRITORY; and
3. Be reported to **Us** in writing within sixty (60) days of its commencement.

Any payment of **Reputation Protection Costs** that **We** make under the cover will not:

1. Be a determination of any other rights or obligations under this Policy;
2. Create any duty to defend any **Claim** under any other part of this Policy; or



3. Operate as a waiver of any right or defence **We** have with respect to the cover under the Policy.

You must notify **Us** as soon as practicable of an **Adverse Public Relations Event**. To the extent possible, notice should include:

1. How, when and where the **Adverse Public Relations Event** took place;
2. The nature and location of the or **Adverse Public Relations Event**; and
3. Written documentation of all and **Reputation Protection Costs**.

The maximum amount payable under this Insuring Agreement is the applicable Sub-Limit of Liability stated in the Schedule.

D. Statutory Liability

Notwithstanding Exclusion 6 Fines and Punitive Damages, **We** will indemnify **You**:

1. For **Defence Costs** for proceedings under consumer protection, privacy, workplace health and safety or environmental protection laws first brought against **You** and notified to **Us** during the **Policy Period** arising from the provision of **Your Healthcare Services**;
2. To the extent permitted by law, for any pecuniary penalties imposed upon You based on any breach of consumer protection, privacy, workplace health and safety or environmental protection law as a result of proceedings relating to the conduct of **Your Healthcare Services** which are first brought against **You** and notified to **Us** during the **Policy Period**, except for any pecuniary penalties:
 - a. relating to any act, error or omission occurring or committed prior to the **Retroactive Date**; or
 - b. imposed where **You** knew, or reasonably should have known, prior to the **Policy Period** that **You** had contravened such law and committed an offence pursuant to that law; or
 - c. imposed as a result of further breaches committed after **You** first knew, or where a reasonable person in the circumstances ought reasonably to have known, that **You** had contravened such law and committed an offence pursuant to that law, and which led to the imposition of increased or additional pecuniary penalties; and
3. To the extent permitted by law, for any compensatory civil penalty first ordered to be paid by **You** and notified to **Us** during the **Policy Period** resulting from the conduct of **Your Healthcare Services**.

The cover provided will only apply to pecuniary penalties imposed in the jurisdiction of the Commonwealth of Australia and pursuant to the laws of the Commonwealth of Australia. The maximum amount payable under this Insuring Agreement is the applicable Sub-Limit of Liability stated in the Schedule.

SECTION II – LEGAL FEES COSTS AND EXPENSES

The maximum amount payable under this Section II is the applicable Sub-Limit of Liability stated in the Schedule except for Clauses 6, 12 and 14 which have their own specified Sub-Limit of Liability.

We will pay on **Your** behalf all necessary and reasonable **Legal Fees, Costs and Expenses**, and notwithstanding Exclusion 6 Fines and punitive damages, when permitted by law, arising out of **Your** provision of **Healthcare Services**, which are made and reported to **Us** during the **Policy Period** in relation to:



1. Disciplinary Investigations and Complaints

Any complaint about or investigation in relation to **Healthcare Services** by or to a disciplinary, credentialing, accreditation, complaint body or similar proceedings commenced against **You** by any patient, adjudication body, governmental or quasi-governmental agency, any professional society, hospital or healthcare organisation, a coronial inquiry or inquest, a criminal inquiry, investigation or proceeding which has jurisdiction to investigate and determine an outcome for the complaint or investigation, **We** will pay on **Your** behalf:

1. All amounts payable by **You** under orders made by the body; and
2. Any **Defence Costs** in respect of the complaint or investigation.

2. Restriction of practice

You restricting the ability of a Medical Practitioner to practice medicine where that Medical Practitioner is required by a training institution or medical board to be supervised, mentored or trained by **You** in order to obtain or maintain a qualification or registration.

3. National Disability Insurance Scheme

Providing an expert opinion in relation to the condition of an applicant of the National Disability Insurance Scheme.

4. Reporting

Reports about others as a result of reporting an incident or a healthcare professional to a hospital, area health service or registration body where **You** were acting in good faith and in the public interest or **You** were required to do so by law.

5. Investigation

The matter described in 4. Reporting proceeding to an investigation or the relevant body requests additional assistance.

6. Employment

1. Defending any allegation made against **You** by **Your** former, current or proposed employee or contracted staff member that relates to or arises from the contract or proposed contract under which the employee or contracted staff member was, is or will be engaged to assist **You** in the provision of **Healthcare Services** including a complaint under anti-discrimination or equal opportunity legislation; or
2. Pursuing or defending any allegation against **Your** former, current or proposed employer that relates to or arises from the contract or proposed contract under which **You** were, are or will be employed to provide **Healthcare Services** in **Your** area of practice including a complaint under anti-discrimination or equal opportunity legislation; or
3. Pursuing or defending any allegation that relates to or arises from a contract or proposed contract under which **You** were, are or will be engaged as an independent contractor to provide **Healthcare Services** in **Your** area of practice including a complaint under anti-discrimination or equal opportunity legislation.

We will not indemnify **You** under this Policy when the **Claim** arises from the acts or omissions of an employee, contractor or any other person when those acts or omissions were:

1. Outside the terms and conditions of his or her employment, contract or agreement; or
2. Outside the boundaries of his or her training and/or qualifications; or
3. Not under **Your** direct supervision.

The maximum amount payable under this Clause 6 Employment is the applicable Sub-Limit of Liability stated in the Schedule.



7. Documents

Replacement or restoration of **Documents** for which **You** are legally responsible and that have been destroyed, damaged, lost or mislaid provided always that the **Documents** were in **Your** custody or control or any other person to whom **You** entrusted, lodged or deposited such **Documents** in the ordinary course of **Healthcare Services**; and **We** will not be liable to make any payment arising out of wear, tear, gradual deterioration, moth or vermin.

8. Health or Medical Benefit Fund

A prosecution or responding to an inquiry brought by a health or medical benefit fund.

9. Subpoena

To challenge a subpoena to produce medical records which relate to **Healthcare Services** provided by **You**, if **You** believe in good faith and upon reasonable grounds that there is a reason to challenge the subpoena or the release of medical records pursuant to the subpoena.

10. Driving Offence

A prosecution for a motor vehicle driving offence which arises out of or is incidental to the provision of **Healthcare Services** where, if convicted, **You** may lose **Your** driving licence or **Your** driving licence may be suspended. This cover only applies to offences whilst driving to an emergency event.

11. Protection Order

An application for a protection order or an intervention order in the Magistrates' Court or Family Court, if **You** fear for **Your** or **Your** immediate family's safety, because of the behaviour of another person who is not a current or former family member.

12. Defamation

Pursuing a complaint against another person who is not a **Professional** where it is alleged that in the course of **Your** practice as a **Professional** **You** were defamed by that person; or costs to write one letter to the provider of a social media website requesting that defamatory comments are removed. Where the author's identity of the defamatory comments is known, **You** are also covered for costs to write one letter to the author requesting that the comments are removed from the social media website.

The maximum amount payable under this Clause 12 Defamation is the applicable Sub-Limit of Liability stated in the Schedule.

13. Breach of Privacy

Notifying any patient, third party or regulator in accordance with **Your** legal responsibility as a result of any actual, alleged or suspected breach of privacy or duty of confidentiality in relation to personal information collected arising out of **Your** provision of **Healthcare Services**, regardless of whether a **Claim** has been made against **You**.

Provided always that **We** will not be liable for:

1. **Reputation protection costs;**
2. Wages, overtime, salaries or fees of **You** or **Your** employees;
3. Cost to comply with any injunctive relief; or

14. Claims Preparation Costs

Out of pocket costs incurred by **You** at our request in the preparation of the submission of a **Claim** which is covered under the Policy.



The maximum amount payable under this Insuring Agreement is the applicable Sub-Limit of Liability stated in the Schedule.

SECTION III – DEFENCE

1. Defence and Settlement

We have the right and duty to defend any **Claim** or **Suit** against **You** for **Damages** which are payable under the terms of this Policy, even if any of the allegations made against **You** are groundless, false or fraudulent. **Our** duty to defend will cease after the applicable Limits of Liability have been exhausted by payment of judgments or settlements and in such event **We** have the right to withdraw from further defence of any **Claim**.

You, at **Your** own cost, will have the right to associate with **Us** in the investigation and defence of any **Claim**, but will not settle any **Claim**, incur any **Defence Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without **Our** written consent, which will not be unreasonably withheld. **We** will not be liable for any settlement, **Defence Costs**, assumed obligation or admission to which **We** have not consented.

We may make any investigation **We** deem necessary and may make any settlement of any **Claim** **We** deem expedient. **You** agree to provide **Us** with all information, assistance and cooperation which **We** reasonably request and agree **You** will do nothing that may prejudice **Our** position or potential or actual rights of recovery.

2. Advancement of Costs and Expenses

We will advance **Defence Costs**, **Legal Fees Costs and Expenses**, and **Reputation Protection Costs**, on a current basis but no later than thirty (30) days after **We** receive itemised invoices for the same and until such time that it is finally established that **You** are not entitled to cover under the terms and conditions of this Policy; provided that to the extent it is finally established that any such amounts are not covered under this Policy, **You** will repay any previously advanced amounts to **Us**.

3. Additional Assistance Payment

If **We** decide to settle a **Claim** and **You** do not agree that such **Claim** should be settled, **You** may elect to contest such **Claim** provided always that **Our** liability will not exceed the amount for which the **Claim** could have been settled including **Defence Costs** incurred up to the date of such election.

After the date that **You** elect to contest a **Claim**, **We** further agree to pay a contribution up to the sum specified in Schedule in additional **Defence Costs** to assist **You** to continue to defend the **Claim**.

SECTION IV – EXCLUSIONS

We will not cover **You** under this **Policy** for any **Claim**, **Defence Costs**, **Damages**, **Suits**, **Legal Fees Costs and Expenses** or **Reputational Protection Costs**:

1. Ownership

Arising from **Your** ownership, financial interest or involvement in any business enterprise that is not defined as **You** in this Policy, whether or not such enterprise is engaged in the provision of **Healthcare Services**.

However, this exclusion does not apply to the provision of administrative or managerial services incidental to the practice of **Healthcare Services**.



2. Former or prospective partner

Arising from a present, former or prospective partner, officer, director, shareholder or their spouses, parents, children or siblings or any subcontractor of **Yours** arising directly or indirectly out of such relationships.

3. Pollution

Arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, waste materials into or upon the land, the atmosphere, or any watercourse or body of water.

4. Employment

Except as provided for in Section II – Legal Fees, Costs and Expenses Clause 6 Employment, arising directly or indirectly from or in respect of:

1. the death, bodily injury, disease or illness of any person arising out of or in the course of or in respect of their employment; or
2. any unemployment or workers compensation, disability benefits, or other similar law; or
3. any dispute concerning employment practices, including disputes concerning wrongful or unfair dismissal, discrimination, harassment or victimisation.

5. Contractual obligation

Arising out of, based upon or attributable to any:

1. liability or other obligation assumed or accepted by **You** under any contract or agreement, except to the extent that such liability would have attached to **You** in the absence of such contract or agreement; or
2. guarantee or warranty.

6. Fines and punitive damages

Which include fines, taxes, or penalties or for punitive, multiplied or exemplary damages.

7. Dishonesty

Arising out of, based upon or attributable to any act which a court, tribunal or arbitrator finds, or which **You** admit, to be a criminal, dishonest or fraudulent act or where there is a finding of criminal, dishonest or fraudulent activity and in such event, **You** will reimburse **Us** for all sums paid in connection with such **Claim**.

8. Registration

Arising out of a **Medical Incident** which took place or is alleged to have taken place while **Your** registration or certification to practice or dispense controlled substances was suspended, revoked, terminated or surrendered or where **You** were in breach of terms, conditions, notations, undertakings or limitations on **Your** registration.

9. Fees

Where a return or withdrawal of any fees or charges is being sought.

10. Retroactive Date

Arising out of, based upon or attributable to **Healthcare Services** provided prior the **Retroactive Date**.



11. Assault and battery

Arising out of or in connection with any assault or battery committed by **You**, except where such conduct was intended to defend a person or property from a real risk of harm.

12. Revocation

Arising out of **Your** provision of **Healthcare Services** by **You** on or after the date of a revocation, restriction or reduction of hospital privileges (except for temporary restriction due to incomplete medical records) or of a hospital-imposed punitive or disciplinary observation, proctorship, preceptorship, or required consultation that **You** have not reported to **Us** immediately in writing.

13. Medical record

Which involves **You**, or any person for whom **You** are legally responsible, in the creation, alteration or modification, with fraudulent intent, of the medical record of any person.

14. Sexual misconduct

Arising from sexual misconduct committed by **You**. **Defence Costs** will be provided to **You** until such time as it is judicially determined that **You** committed the sexual misconduct, or until such time as an admission of the commission of sexual misconduct is made by **You**.

15. Anti-competitive conduct

Arising out of, based upon or attributable to any actual or alleged unlawful restrictive trade practices, restraint of trade or unfair competition.

16. War/Terrorism

Arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any political or terrorist organisation.

17. Telehealth

That:

1. Arise as a result of **Telehealth Services** provided to or in respect of a patient who is outside of Australia at the time the **Telehealth Services** were provided; or
2. Involve proceedings brought against **You** in a court or other body outside of Australia or which apply the laws of a country other than Australia.

18. Prior Claims

1. That are made prior to or pending at the inception of this Policy; or
2. arising out of, based upon or attributable to any circumstance which may reasonably be expected by **You** to give rise to a **Claim**, that is known to **You** prior to inception of the Policy; or
3. derived from the same or essentially the same facts as alleged in any **Claim** made prior to or pending at the inception of the Policy.



19. Public Patients

Arising out of **Healthcare Services** to a public patient, to whom a hospital or area health service has agreed to provide medical care, including medical, nursing and diagnostic services, when **You** are entitled to an indemnity by **Your** employer or another indemnity. **You** must provide written proof that **You** are not already indemnified for the public patient and that **You** have declared **Your** estimated gross income from the public patient work prior to the commencement of the **Policy Period**.

20. Bankruptcy or Insolvency

Arising out of, based upon or attributable to **Your** actual or alleged insolvency, bankruptcy, administration or receivership.

21. Business

Arising out of, caused by, resulting from, inconsequence of, in connection with or in any way involving:

1. the sale of **Your** practice or business; or
2. any employment contract or contract for services that results from that sale or is negotiated as part of that sale.

22. Related Entities

Except as provided for in Section II – Legal Fees, Costs and Expenses Clause 6 Employment, brought or maintained by or on behalf of:

1. any associated entity (whether incorporated or not) of **Yours**;
2. any person, firm, company or entity:
 - a. operated or controlled by **You**;
 - b. operated or controlled by any employee, partner, nominee or trustee of **Yours**.

23. Sanctions

For any amount or provide any benefit hereunder to the extent that the provision of cover, payment of such amount or provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

SECTION V - LIMITS OF LIABILITY

Regardless of the number or types of **Damages, Claims, Healthcare Services** provided, claimants or causes of action, involved, **Our** liability is limited as follows:

1. **Our** total liability to **You** for all **Damages** arising out of **Claims** in respect of **Medical Incidents** to which this Policy applies will not exceed the Limit of Liability stated in Item 6 of the Schedule as the Limit of Liability for "Each **Policy Period**."
2. If **We** conclude that, based on **Medical Incidents, Claims** or **Suits** which have been reported to **Us** and to which this insurance may apply, that the Limit of Liability is likely to be exhausted in the payment of **Damages, We** will notify **You** in writing.
3. When a Limit of Liability has been exhausted by the payment of **Damages, We** will notify **You** in writing, as soon as practicable, that:
 - a. the Limit of Liability has been exhausted; and
 - b. **Our** duty to defend **Claims** and **Suits** seeking **Damages** subject to that Limit of Liability had ended.



4. **We** will initiate, and cooperate in, the transfer or control, to **You**, of all **Claims** and **Suits** seeking **Damages** which are subject to the exhausted Limit of Liability and which were reported to **Us** before the Limit of Liability was exhausted. **You** must cooperate in the transfer of control of said **Claims** and **Suits**.
5. **We** agree to take such steps as it deems appropriate to avoid a default in, or to continue the defence of, such **Claims** and **Suits** until such transfer is completed, provided **You** cooperate in completing such transfer.
6. **We** will take no action whatsoever with respect to any **Claim** or **Suit** that is reported to **Us** after that Limit of Liability has been exhausted.
7. **You** must arrange for the defence of such **Claim** or **Suit** within a time period as agreed to by **Us**. Absent any such agreement, arrangements for the defence of such **Claim** or **Suit** must be made as soon as practicable.
8. **You** will reimburse **Us** for expenses **We** incur in taking those steps **We** deem appropriate in accordance with paragraph 3 b. above. **Your** duty to reimburse **Us** will begin on:
 - a. The date on which the applicable Limit of Liability is exhausted, if **We** sent notice in accordance with paragraph 2 above; or
 - b. The date on which **We** sent notice in accordance with paragraph 3 above.
9. The exhaustion of any Limit of Liability by the payments of judgments or settlements and the resulting termination of **Our** obligation to provide a defence under the Policy will not be affected by **Our** failure to comply with any of the provisions of this condition.
10. Sub-Limits of Liability are part of and not payable in addition to the Limit of Liability.

Limits of Liability and Defence Costs

Defence Costs will be provided in addition to the applicable Limits of Liability.

Automatic Reinstatement of Your Limit of Liability

If a **Claim** or **Claims** exhaust the Limit of Liability under this Policy, **We** agree to reinstate the Limit of Liability to the extent of the eroded amount, provided always that **Our** total amount payable under this Policy will not exceed:

1. The Limit of Liability in respect of any one **Claim**, and
2. Twice the Limit of Liability in respect of all **Claims** during the **Policy Period**.

SECTION VI - POLICY TERRITORY

This Policy applies to **Medical Incidents** occurring and **Legal Fees, Costs And Expenses** incurred:

1. within the Commonwealth of Australia;
2. outside the Commonwealth of Australia, other than in the USA, for up to 120 days of practice; and
3. anywhere in the world when rendering emergency medical treatment without the expectation of compensation.



SECTION VII – CLAIMS CONDITIONS

1. All **Claims** arising out of the same **Medical Incident** will be considered as one **Claim** and subject to one **Retention**.
2. All such **Claims** constituting a single **Claim** will be deemed to have been first made on the date on which the earliest single **Claim** was first made, regardless of whether such date is before or during the **Policy Period**.
3. **You** must give **Us** notice as soon as practicable, of any **Suit, Claim**, or circumstances likely to result in a **Claim**. **You** should furnish **Us** with copies of reports, investigations, pleadings and all other papers in connection therewith.

Notice of Claims are to be given to:

Email: Healthcareclaimsaustralia@bhspecialty.com

Mail: Berkshire Hathaway Specialty Insurance

GPO Box 650 Sydney NSW 2001

Phone: 1300 938 991 (24 hours)

SECTION VIII – CONDITIONS

Your failure to comply with any of the following terms and conditions may entitle **Us** to reduce **Our** liability for **Your Claim**.

1. Your Responsibilities

You must give and receive all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under the Policy.

2. Your Cooperation

You must cooperate with **Us** and must not admit or assume any liability, settle any **Claim**, or incur any expense without **Our** prior written consent.

You must not incur **Defence Costs, Reputation Protection Costs, or Legal Fees, Costs and Expenses** incurred under any cover, in connection with any **Claim Adverse Public Relations Event**, without **Our** prior written consent, which consent will not be unreasonably withheld or delayed.

We will not be liable under this Policy for any such amounts incurred without such consent.

Upon **Our** request, **You** must assist in making settlement of **Claims** and in enforcing any right of contribution or indemnity against any person or organisation. **You** will need to attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

If **We** decide to settle a **Claim** and **You** do not agree that such **Claim** should be settled, **You** may elect to contest such **Claim** provided always that **Our** liability will not exceed the amount for which the **Claim** could have been settled including **Defence Costs** incurred up to the date of such election. After the date of such election, **We** further agree to pay a contribution up to the sum specified in Schedule in additional **Defence Costs** to assist **You** to continue to defend the **Claim**.



3. Notification of Practice Changes

You or **Your** legal representative must:

1. To notify **Us** within 30 days of any changes in **Your** practice as shown on the application for this insurance.
2. Not to practice medicine in any jurisdiction in which **You** are not properly registered to do so, other than to provide emergency medical treatment.

4. Cancellation

1. **You** may cancel the Policy at any time by notifying **Us** in writing. In such case **We** will be entitled to retain a pro-rata proportion of the Premium. The refund of unearned Premium by **Us** will be made as soon as practicable to **You** but will not change the effective date of cancellation of the Policy.
2. **We** may cancel the Policy in accordance with the *Insurance Contracts Act 1984 (Cth)*. In such case, **We** will be entitled to retain a pro-rata proportion of the Premium. The refund of unearned Premium will be made as soon as practicable to **You** but will not change the effective date of cancellation of the Policy.

5. Inspection and Audit

We will be permitted but not obligated to inspect **Your** premises and operations at any time. Neither **Our** right to make inspections nor provide a report will constitute an undertaking, on behalf of or for **Your** benefit, to determine or warrant that such premises or operations are safe or healthful, or are in compliance with any law, rule, or regulation or industry standard of health care.

6. Subrogation

If any payment is to be made under this Policy in respect of a **Claim**, **We** will be subrogated to all **Your** rights of recovery whether or not payment has in fact been made and whether or not **We** have been fully compensated for the loss suffered. **We** will be entitled to pursue and enforce such rights in **Your** name, who must provide **Us** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. **You** will do nothing to prejudice these rights. Any amount recovered in excess of **Our** total payment under the Policy will be restored to **You** less the cost to **Us** of such recovery. At **Our** sole discretion, **We** may, in writing, waive any of its rights in this clause.

7. Goods and Services Tax (GST)

Unless expressly stated otherwise, any amount payable in respect of this Policy is exclusive of GST. If GST is or becomes payable on any supply made in connection with this Policy, an additional amount is payable by the recipient of the supply equal to the amount of GST payable on that supply. If **You** are registered or required to be registered for GST **You** must tell us **Your** Australian Business Number and entitlement to an input tax credit. We will ask **You** for this information if **You** lodge a claim. If **You** fail to disclose or incorrectly disclose **Your** entitlement, **You** may be liable for GST on a claim **We** pay. This Policy does not cover **You** for this GST liability, or for any fine, penalty or charge for which **You** may be liable.

8. Run Off Cover

Where **You** have continuously held medical professional indemnity insurance with **Us** for at least five (5) years immediately prior to ceasing private medical practice if during the **Policy Period**:



1. **You** notify **Us** that **You** have ceased, or intend to cease, private medical practice for a period of more than twelve (12) months (other than on an occasional and gratuitous basis); and
2. **You** are aged less than 65 years.

We will in accordance with the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*:

1. Offer to provide **You** with insurance cover under this Policy until the end of the **Policy Period**;
2. Offer to provide **You** with an annually renewable medical indemnity insurance cover for **Claims** that may be made against **You** after the **Policy Period** in respect of prior acts or omissions; and
3. If each offer is accepted, **We** will make a further offer of medical indemnity insurance cover for the run-off of **Your** liability so that the total period during which the cover may be renewed is three (3) years, starting from the end of the **Policy Period**.

9. Difference in Conditions

If the cover that would have been provided under the **Previous Policy** is broader than that provided under this Policy for the same **Healthcare Services**, then **We** will pay on **Your** behalf all sums which **You** become legally liable to pay as **Damages** arising out of a **Medical Incident**, to which this Policy applies, including **Defence Costs**, as if the **Previous Policy** were still in force.

For this Difference in Conditions cover to operate **You** must provide to **Us** written evidence of the **Previous Policy**.

10. Continuous Cover

If **You** were aware of any facts that might give rise to a **Claim** or administrative or regulatory proceeding, official investigation, coronial inquiry or hearing arising from the performance of **Healthcare Services** prior to the commencement of the **Policy Period** and had not notified **Us** of such facts prior to the commencement of the **Policy Period**, then Exclusion 18 in respect of Prior Matters will not apply to the notification of a **Claim** or administrative or regulatory proceeding, official investigation, coronial inquiry or hearing resulting from such facts, provided that:

1. the failure to notify such facts was not a result of any fraudulent misrepresentation or fraudulent non-disclosure by **You**;
2. **You** first became aware of such facts after the Continuity Date; and
3. **We** may reduce **Our** liability to the extent of any prejudice suffered as a result of **Your** failure to notify such facts giving rise to a **Claim** or administrative or regulatory proceeding, official investigation, coronial inquiry or hearing prior to the commencement of the **Policy Period**.

11. Retention

We will only pay for the amount of any **Claim** in excess of the **Retention**. For the avoidance of doubt, the **Retention** applies to all amounts payable under this Policy, including **Defence Costs**, unless expressly stated otherwise. The **Retention** is to be borne by **You** and will remain uninsured.

12. Governing Law

Any interpretation of this Policy or issue relating to its construction, validity or operation will be governed by the laws of the Commonwealth of Australia whose Courts will have exclusive jurisdiction in any dispute arising hereunder.



SECTION IX – DEFINITIONS

Words and phrases that are capitalised and bolded when used in this Policy have the following meaning:

"Adverse Media Cover" means national or local news exposure in television, radio, print or internet media that is reasonably likely to have a negative impact on **You** with respect to **Your** income, reputation, community relations, public confidence or goodwill.

"Adverse Public Relations Event" means an event that, in **Your** good faith opinion, has resulted in or is reasonably likely to result in a need for **Public Relations Management Services** due to **Adverse Media Cover**, including such an event arising out of one of the following:

1. allegations of fraud or improper billing; or
2. a **Security and Privacy Breach**.

"Claim" means:

1. any written demand;
2. any civil, statutory, administrative or regulatory proceeding (including arbitration, mediation, conciliation, or other alternative dispute resolution process), **Suit** or counterclaim;

"Clinical Trial" means research investigations in which people volunteer to test new treatments, interventions or tests as a means to prevent, detect, treat or manage various diseases or medical conditions.

"Compliance Audit" means the evaluation of the necessity and appropriateness of patient care and costs of services provided through the review of medical records and reports by Medicare.

"Damages" means any amount that **You** are or become legally liable to pay in respect of settlements and judgments against **You**. **Damages** does not include the return, withdrawal or reduction of professional fees, profits, charges or Medicare Benefits for **Healthcare Services** rendered by **You**.

"Defence Costs" means the necessary and reasonable costs of investigating, defending, adjusting, settling or appealing any **Claim** made against **You** and incurred by **You** or on **Your** behalf.

Defence Costs also means:

1. Reasonable expenses incurred by **You** at **Our** request or with **Our** consent to assist **Us** in the investigation or defence of the **Claim** including loss of earnings (subject to a maximum of \$2,000 per day for a maximum of ten days) because of actual time off from work while attending trial or arbitration in connection with such **Claim**;
2. Interest on the amount of judgment that accrues after entry of judgment and before **We** have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability;
3. Where required by law, prejudgment interest awarded against **You** on that part of the judgment **We** pay; and
4. Expert evidence or assistance in legal proceedings.

Defence Costs does not include any salaries, wages, overhead, benefits or benefit expenses.

"Documents" means all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.



"**Healthcare Services**" means:

Medical services within **Your** declared specialty being directly related to evaluating, diagnosing or treating patients, and the routine medical care incidental to the provision of such services to patients.

1. A Medicare **Practitioner Review, Compliance Audit** and participation on medical or quality of medicine review committees, as may be required within the scope of **Your** duties.
2. Services as a member of a formal accreditation, credentialing or standards review or similar professional board or committee, as may be required within the scope of **Your** duties.
3. Formal clinical teaching activities.
4. The rendering of emergency medical treatment without the expectation of compensation.
5. Working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.
6. Participation in a **Clinical Trial** that has been approved by a properly constituted ethics committee and the **Clinical Trial** does not involve foetuses, pregnant women, gene therapy, stem cells or children less than 16 years of age unless **We** have agreed to provide cover.

"**Legal Fees Costs and Expenses**" means the necessary and reasonable fees, costs and expenses incurred in the conduct of or response to matters covered by SECTION II of this Policy.

"**Medicare Benefits Complaint**" means actual or alleged fraud against Medicare, the Pharmaceutical Benefits Scheme, private health fund insurer or any other government programs administered by Medicare by the payment of any benefit or funds to any person who had no legal entitlement to such benefit or funds.

"**Medical Incident**" means any actual or alleged negligent act or omission in the furnishing of **Healthcare Services** by **You**.

"**Patient**" means any person seeking or receiving professional medical services from **You**, either on a private or public inpatient, outpatient or emergency basis.

"**Policy Period**" means the period commencing on the inception date shown on the Schedule and ending on the earlier of the expiration date shown on the Schedule or the effective date of cancellation of the Policy.

"**Practitioner Review**" means an independent review by **You** of the clinical practice of a practitioner, surgeon, or other health care **Professional** with respect to the quality of care and treatment of patients.

"**Previous Policy**" means the mandatory professional indemnity insurance policy issued in Australia by a Medical Defence Organisation to **You** in the policy period immediately prior to this **Policy Period** commencing.

"**Professional**" means any person who renders healthcare services to patients.

"**Public Relations Management Firm**" means any firm hired by **You** or **Us** to perform **Public Relations Management Services** in connection with an **Adverse Public Relations Event**.

"**Public Relations Management Services**" means those services performed by a **Public Relations Management Firm** in advising **You** on minimising potential harm to **Your** reputation from a covered **Adverse Public Relations Event** by managing **Adverse Media Cover** and maintaining and restoring public confidence in **You**.

"**Reputation Protection Costs**" means the following reasonable and necessary fees and expenses incurred as a result of an **Adverse Public Relations Event**:



1. Fees charged by a **Public Relations Management Firm** for the performance of **Public Relations Management Services** for **You**;
2. Expenses incurred by a **Public Relations Management Firm** in the performance of **Public Relations Management Services** for **You**; and
3. Fees and expenses for:
 - a. printing, advertising and mailing of materials; and
 - b. travel by **You** or the **Public Relations Management Firm**;

which are incurred at the direction of a **Public Relations Management Firm**.

Reputation protection costs do not include any **Defence Costs** or any salaries, overhead, fees, loss of earnings or benefit expenses incurred by **You**.

"**Retroactive Date**" means the date specified in the Schedule.

"**Security and Privacy Breach**" means any unauthorised or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information, whether or not it is associated with any electronic data breach, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information.

"**Suit**" means any **Suit** or other civil, administrative or mediation, conciliation or arbitration proceeding in which **Damages** arising out of a **Medical Incident** are alleged and/or claimed.

"**Telehealth services**" means the electronic transmission of health information and images in the delivery of both clinical and non-clinical health-related services, using a range of telecommunications technologies.

"**Trade Secrets**" means any information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

"**You/Your**" means:

1. the individual named as the insured in the Schedule.
2. A medical practitioner who is temporarily serving as locum for **You** whilst **You** are temporarily absent. Locum will not include any medical practitioner engaged by **You** on a temporary basis to provide additional staffing.
3. A trust. **Your** trustees, are also insureds, but only with respect to the conduct of **Your** medical practice;
4. Any volunteer worker authorised by the named insured while acting within the scope of their duties as such, however this does not include medical practitioners;
5. Any healthcare student who is in a training program sponsored and controlled by the individual named as the insured in the Schedule while acting within the scope of their duties as such;
6. Any employee of the individual named as the insured in the Schedule while acting within the scope of their duties as such, however this does not include any medical practitioners or healthcare practitioners.

If **You** die or become legally incompetent, this insurance will automatically terminate but **Your** legal representative will be covered for any **Medical Incident** previously committed by **You** before **You** died or became legally incompetent, provided such **Medical Incident** is otherwise covered by this Policy.

"**We/Us/Our**" means Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence No. 466713).